

(d) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) to receive a benefit under this program.

19.1404 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (*see* Subpart 8.6);

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (*see* Subpart 8.7);

(b) Orders under indefinite delivery contracts (*see* Subpart 16.5);

(c) Orders against Federal Supply Schedules (*see* Subpart 8.4); or

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program.

[69 FR 25278, May 5, 2004, as amended at 70 FR 14955, Mar. 23, 2005]

19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (*see* 19.1406).

(b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an

award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (*see* Subpart 19.5).

(d) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

19.1406 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a sole source basis (*see* 19.501(d) and 6.302-5), provided—

(1) Only one service-disabled veteran-owned small business concern can satisfy the requirement;

(2) The anticipated award price of the contract (including options) will not exceed—

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(i) \$5 million for a requirement within the NAICS codes for manufacturing; or

(ii) \$3 million for a requirement within any other NAICS code;

(3) The service-disabled veteran-owned small business concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a service-disabled veteran-owned small business sole source award.

19.1407 Contract clauses.

The contracting officer shall insert the clause 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions under 19.1405 and 19.1406.

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